FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Misc.Civ.Application No. 375 of 2007 @ Misc.Civ.Application No. 376 of 2007

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATE : 16th April, 2007.

Since no ground was made out for reviewing the common order passed by this Court on 6th March, 2007 in Second Appeals No.95 of 2005 and 97 of 2005, the review applications are liable to be dismissed and are dismissed as such.

Though the review applications filed by the appellants in Second Appeal Nos.95 of 2005 and 97 of 2005 are liable to be dismissed in the absence of any ground for reviewing the order, it is necessary to note certain facts in this order. This Court had observed on Page 5 of the common order dated 6th March, 2007 that the pleadings of the appellants in both the suits clearly reveal that it was not the case of the appellant that they were either the owners of the property, were the tenants of the property or had inherited the tenancy rights in the suit property. The counsel for the applicants in these Miscellaneous Civil

Applications had taken an exception to this statement of fact in the order dated 6th March, 2007. According to the learned counsel for the applicants, the appellants had clearly pleaded in Regular Civil Suit No. 478 of 1989 and in paragraph 3 thereof that one Narayan was the tenant in the property and after his death, the name of one Goma had been shown against these lands. It is submitted on behalf of the applicants that the last sentence in paragraph 3 of the plaint recites that Goma had died long back and thereafter the plaintiff had inherited his tenancy also. It is submitted on behalf of the applicants that these pleadings in paragraph 3 of the plaint clearly show that the Narayan was the original tenant in the suit property and after him Goma and thereafter the appellants had inherited the tenancy rights. It is conspicuous to note that the last sentence in paragraph 3 of the plaint is handwritten. It is also conspicuous to note that this last sentence is not signed or initialed either by the plaintiff/appellant or by their counsel. When the Second Appeal was being argued before this Court on the first occasion i.e. on 27th February, 2007, this Court had a occasion to peruse the pleadings and since this matter was hotly contested, this Court had minutely and carefully

perused them. This Court had recorded in the order dated 6th March, 2007 that it was not the case of the appellants that they were either the owners or the tenants of the property or had inherited the tenancy rights in the suit property after minutely going through the pleadings of the appellant. Paragraph 3 of the pleadings, as this Court had then perused carefully, showed that originally one Narayan was the tenant in the suit property and thereafter the name of Goma was recorded. The pleadings, however, did not bear the last sentence in paragraph 3 of the plaint filed by the appellant in the handwritten form. This last sentence must be definitely absent in paragraph 3 of the plaint when it was filed in the trial Court. This conclusion can be drawn from the fact that the legal notice issued by the lawyer and marked as Exh.78 in the Regular Civil Case No.478 of 1989 did not mention that the appellants have inherited the tenancy rights in the land in question. It is merely stated in the notice Exh.78 dated 12th January, 1989 that the appellants were in peaceful possession of the land since long. It is further necessary to note that the defendant i.e. the Punjabrao Krishi Vidyapeeth in Regular Civil Suit No.478 of 1989 also does not reflect that the plaint pleadings in paragraph 3 recited that

Goma had died long back and thereafter the plaintiff had inherited his tenancy rights also. A perusal of the written statement at Exh.26 clearly shows that each and every statement of fact is either admitted or denied by the defendant in the written statement. But, there is no admission or denial of the fact that *"Goma had died long back and thereafter the plaintiff had inherited his tenancy also."*

A bare perusal of the plaint Exh.1 in Regular Civil Suit No.478 of 1989 clearly shows that the words *"Goma had died long back and thereafter the plaintiff had inherited his tenancy also"* have been incorporated in the plaint after it was filed as the said handwritten statement/pleading is not initialed either by the plaintiff, his counsel or any officer of the Court. The fact of the subsequent incorporation of the sentence/pleading in paragraph 3 of the plaint can be further demonstrated from taking the help of the statements of facts recorded in the application made by the plaintiffs/appellants under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure. Exh.5 filed by the plaintiffs/ appellant in Regular Civil Suit No.478 of 1989 is a verbatim copy of the pleadings in Regular Civil Suit No.478 of 1989. Each and every pleading in the plaint in Regular Civil Suit No.478 of 1989 is

incorporated as a statement of fact in the Civil Application for grant of temporary injunction. Paragraph 3 of the application for grant of injunction at Exh.5 is a verbatim copy of paragraph 3 of the plaint except the handwritten portion. Thus, a perusal of Exh.78 the copy of the notice, Exh.1 the plaint which is not initialed where the sentence is incorporated, the written statement at Exh.26 and the application for grant of injunction at Exh.5, on a combined perusal and reading thereof, point out to an irresistable conclusion that the last sentence in paragraph 3 of the pleadings was not existing when the plaint was filed. It is not the case of the appellants and it is also not a matter of record that the appellants have filed any application for amendment of the plaint for incorporating the aforesaid sentence in paragraph 3 and had been permitted by the trial Court to amend the plaint accordingly. Since the last sentence in paragraph 3 was not incorporated in the pleadings at the time of filing of the plaint and had also not been subsequently pleaded by amendment to the plaint, it cannot be said that the plaintiffs/ appellants had pleaded in Regular Civil Suit No.478 of 1989 that they were the tenants in the suit property or had inherited the tenancy rights of Goma.

It is necessary to note that this Court had heard this matter on 27th February, 2007 and had not found the aforesaid pleadings in the plaint as the last sentence in paragraph 3 was not existing in the copies of plaint supplied by the counsel to the Court. Since this Court was not inclined to admit the matter, the counsel for the appellant sought some time and the matter was directed to be placed high on board on 1st March, 2007. On 1st March, 2007, Shri P.K. Dhomne who was holding for Shri Kshirsagar, the learned counsel for the appellant, submitted that the client was present in the Court today and was desirous of engaging a senior counsel and hence matter may not be taken up on 1st March, 2007. Since the matter was specifically kept at high on board at Sr.No. 1 on 1st March, 2007, this Court made it clear that the appellant could be accommodated only for the day and the office was directed to list the matter on 2nd March, 2007 at Sr.No. 1. Shri R.L. Khapre, who is not a designated senior counsel, submitted that the appellant had entrusted the matter only on 2nd February, 2007 and hence, he may be accommodated for some days. The matter was kept on 6th March, 2007, high on board as a last chance. Since the brief changed hands and since the matter was being hotly

contested and was argued at length before this Court by Shri Kshirsagar and Shri Khapre on a couple of occasions, this Court had minutely perused the Record & Proceedings to find that the pleadings in regard to ownership, tenancy rights or inheritance of tenancy rights were absent in the plaint. Having so noticed, this Court observed the aforesaid fact in the common order dated 6th March, 2007 by which the appeals were dismissed. It appears that some time before this Court passed the order dated 6th March, 2007, the last sentence in paragraph 3 of the plaint in Regular Civil Suit No.478 of 1989 came to be incorporated. Though the last sentence in paragraph 3 was not in existence when this Court perused the plaint on 27th February, 2007 and though this Court is clearly of the view that this Court had rightly observed that the pleadings of the appellants in both the suits did not disclose that it was the case of the appellants that they were either the owners or the tenants of the property or had inherited the tenancy rights in the suit property, this Court while dismissing the review applications wanted to bring these facts on record, so that the appellants may not be permitted to take unfair advantage of the last sentence in paragraph 3 of the plaint in Regular Civil Suit No.478 of 1989 at any subsequent stage of

proceedings. It is apparent that the appellants have not prosecuted the case with clean hands.

Thus, though there was no ground made out for reviewing the common order passed by this Court on 6th March, 2007 and though the fact recorded by this Court in the judgment about the absence of pleadings of the appellants was true and correctly stated, this Court was duty bound to record these facts in this order so that the appellants should not be permitted to take undue advantage of the alleged pleading in para 3 which is unfairly inserted.

JUDGE

APTE